

SPECIAL CIVIL APPLICATION NO. 4218 OF 1986

Date of decision: 10-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(10-7-1996)

Mr. P.R. Abichandani for Mr. Y.N. Oza for the petitioner.
Mr. N.N. Pandya for the respondents.

ORAL JUDGMENT:

The petitioner, who is holding the post of Searcher in Finger Prints Bureau of the Police Department of the State of Gujarat has filed this special civil application challenging the order annexure-A dated 14-8-1986 under which respondents No.4 to 11 were promoted to the post of Junior Expert, Class III. It is not in dispute that the case of the petitioner has been considered for promotion, but he was not found suitable.

2. Challenge to the promotion of respondents No.4 to 11 is difficult to understand on two counts. The petitioner could not have made grievance against promotion of juniors and his grievance could have been only against his supersession. Secondly, even if the claim of the petitioner is accepted then at the most, in case the post is not available, the juniormost promotee may be affected and as such challenge to the promotion of all the juniors is difficult to understand.

3. The only contention raised by the learned counsel for the petitioner is that the petitioner has passed the departmental examination for promotion to the post of Junior Expert, Class III, in the first attempt and as such he should have been given promotion in preference to his juniors (respondents No.4 to 11) who passed the said examination in the second or third attempt. The relevant recruitment rules have been produced along with the reply to the writ petition and I do not find anything therein which provides that the person who passed the examination in the first attempt should be given promotion in preference to the persons who have passed the said examination in the second or third attempt. Passing of examination is a condition of eligibility and the number of attempts made in passing the same is not significant. Reference to Rule 70(vii) of the Gujarat Police Manual, 1975 has been made, wherein it has been provided that mere passing of examination does not confer any claim for promotion, the passing is only one, but not the only qualification for promotion. Future advance will depend entirely on general merits, including industry coupled with the passing of prescribed examination. The petitioner has right of consideration and not the right of promotion.

4. This court will not sit as appellate authority over the decision of the departmental promotion committee. Yet there is another ground on which this writ petition is not maintainable. The case of the petitioner is that he is senior to respondents No.4 to 11, but in the reply to the petition the respondents have come up with the case that the petitioner is junior to these respondents. Averments made in para 6 of the reply have not been controverted by the petitioner by filing any rejoinder. Along with the reply

the respondents have also filed document annexure-II wherein service particulars of respondents No.4 to 11 and the petitioner have been given. All respondents No.4 to 11, except M. R. Raval, were appointed on the post of Searcher earlier to the petitioner. So far as Mr. M. R. Raval is concerned, he and the petitioner were appointed on the post of Searcher on the same day. The petitioner is unable to give out any reason why he should be treated senior to Mr. M. R. Raval. Otherwise also the petitioner is not senior to respondents No.4 to 11 and as such it cannot be said to be a case where any of legal or fundamental right of the petitioner has been infringed.

5. In the result the special civil application fails and the same is dismissed. Rule discharged.